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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,491	04/07/2005	Martin Hellsten	PST6366P1US/2187	9838
27624	7590	09/10/2010		
AKZO NOBEL INC. LEGAL & IP 120 WHITE PLAINS ROAD, SUITE 300 TARRYTOWN, NY 10591			EXAMINER METZMAIER, DANIEL S	
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			09/10/2010 ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPANLPATENT@AKZONOBEL.COM

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/520,491

Applicant(s)

HELLSTEN ET AL.

Examiner

Daniel S. Metzmaier

Art Unit

1796

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 08 June 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-5 and 8-21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Daniel S. Metzmaier/
Primary Examiner, Art Unit 1796

Continuation of 3. NOTE:

Appellants response has not been entered for the following reasons:

- (1) Claim 8 presents two concentration limitations sequentially that appear inconsistent and indefinite. Attention may be further directed to 37 CFR 1.75(i) regarding claim form.
- (2) The limitations of claim 8 have not herein before been presented in claim 8, composition claim, as presented in amended form, filed on 8/23/2010.
- (3) Appellants do not provide a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

Applicants combine the limitations of claims 17 and 18 to address the issue of the claimed component (b) concentration reading on zero (0) % and Appellants assert that the amendment addresses the examiner's point at page 6 of the Final Office Action, mailed 1/8/2010. Appellants' reference to page 6 of the Final Office Action, mailed 1/8/2010. This issue was initially raised at page 3 of the Office Action mailed 2/28/2008.

Appellants, throughout prosecution, have chosen to amend and argue the independent claims 1, 8, and 11 separately. See the separate and different limitations introduced in the independent claims 1, 8, and 11 filed in amendments and arguments therein on 7/28/2008, 2/13/2009, 9/13/2009. Based on appellants' distinct prosecution of claims 1, 8, and 11, amendments of the composition claim 8 to include newly presented limitations therein is clearly a new issue requiring further search and/or consideration at this point in the prosecution.

Furthermore, Appellants could have but chose not to amend claim 8 prior to the close of prosecution in the Final Office Action, mailed 1/8/2010. Amendments could have been made at the time similar amendments were made to claim 1 (response filed 7/28/2008) or at the time similar amendments were made to claim 11 (response filed 9/10/2009). Appellants did not choose to make amendments to claim 8 at those times. It is concluded that Appellants do not provide a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented since Appellants have amended the claims three times since the issue was raised but choose not to amend claim 8. An attempt to amend after the close of prosecution is untimely and raises new issues as set forth herein above.

The claims remain rejected for the reasons of record.